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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1966

No. 940

ALEXANDER WALLACE,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois.

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(a) REFERENCE TO REPORTS OF OPINIONS.

Wallace v. *Illinois,* 35 Ill. 2d 251; 220 N.E. 2d 198; Gen. No. 39288 is attached as Appendix A.

(b) STATEMENT OF JURISDICTIONAL GROUNDS.

Final process issued from the Supreme Court of Illinois on October 8, 1966. Jurisdiction of this Court is invoked under Title 28, USC, Sec. 1257 (3).

(c) QUESTIONS PRESENTED FOR REVIEW.

Does a conviction resulting from a plea of guilty which is based upon the use of an involuntary confession violate rights guaranteed under the Fourteenth Amendment?

(d) CONSTITUTIONAL PROVISIONS INVOLVED.

Fourth, Fifth and Sixth Amendments and Due Process Clause of the Fourteenth.

(e) STATEMENT OF THE CASE.

On June 17, 1962, the body of Herbert Kwate was found some distance from a highway near Carpentersville, Kane County, Illinois. He had been shot several times and was dead when found. There was no witness to the killing. At 11:00 P.M. on June 19th, petitioner, in the company of another, proceeded to a Chicago police station because of information that a detective wanted to talk to him. The detective was not on duty, but neither were permitted to leave and they were questioned by other officers. They were questioned several times during the night, separated and placed in various rooms in the station. At 8:45 A.M. on the 20th, they were taken to another station, questioned further, and later that morning transported to the Central Police Station and Court Building, photographed and fingerprinted and returned to the second station. They were not taken into court, although various courts were in session in the building. (Abst. 3)

In the early afternoon of the same day, petitioner was placed in a police vehicle, driven some distance away but when he became ill, was returned. The officers state that he was being returned to the first station to give a statement. Petitioner claimed that he had been beaten

in the stomach while in the auto, which claim was denied by the officer present. Shortly after his return to the station, petitioner was taken to the hospital, vomited and stated that he had become nauseated while in a cell at the station. (Abst. 4)

At 4:00 P.M. on June 20th, petitioner was delivered over to the sheriff's police from Kane County and driven to Geneva, Illinois a distance of fifty miles and two counties away where he was lodged in the County Jail at 6:00 P.M. on that date. Petitioner was not charged with any offense by police in Chicago, and the Kane County officers did not have any warrant or process for his arrest. Petitioner was questioned during the trip to Geneva and briefly again that evening. He was questioned intermittently again on the 21st, and again on the morning of the 22nd. Following the questioning on the 22nd, he was placed in an auto with deputies to be returned to Chicago for release because there was no evidence on which to hold him. While enroute, a radio call was received in the squad, and petitioner was returned to Geneva for possible parole violation. Kane County authorities had no parole violation warrant in their possession. (Abst. 29)

At 8 P.M. on Saturday, June 23rd, five detectives from Chicago arrived at the County Jail and requested to see petitioner. A half hour after their arrival, an oral confession was obtained by these officers, which was later reduced to writing and signed after midnight on June 24th. Petitioner contended that physical force had been exerted during the questioning which resulted in the confession. This claim was denied by all the officers present.

Following the signing of the written statement, during the early morning hours of Sunday June 24th, a magis-

trate was brought to the County Jail and petitioner was formally charged with the murder of Herbert Kwate.

Later Sunday morning, petitioner was taken in a squad car and a search was made for a weapon. It was not found at that time, but was recovered by officers later that day.

Petitioner testified that following his confession, various law officers of Kane County stated they would help him if he did not hire a lawyer. He contended that the Chief Deputy Sheriff stated that he would know the term of his sentence before he plead guilty. This statement was corroborated by petitioner's mother, but denied by the deputy.

Within a matter of a few days following the confession, and up to and including the day petitioner plead guilty, he was permitted visits two or three times a week in the evening and on Sunday. These visits were always in a private room in the jail and petitioner's family was permitted to bring in clothing and food in direct contravention of jail regulations. Normal visiting hours were from 2 to 4 P.M. on Saturday for other prisoners and consisted of ten or fifteen minutes in a visitors cage. When questioned at the hearing, the Sheriff admitted that the privileges granted petitioner were not in his memory afforded any other prisoner. When petitioner's Mother was prompted to inquire as to the disparity of treatment, she was advised by the Sheriff that this was a "special case." (Abst. 11)

The Court appointed counsel for petitioner on July 11th. On August 6th he plead guilty to the charge of murder, and on August 9th a hearing in aggravation and mitiga-

tion was had, and the confession obtained from the petitioner on June 23rd was read to the Court. On August 13th petitioner appeared before the Grand Jury and an indictment was returned against one Gary D'Alessandro charging the crime of murder. On August 15th, petitioner was sentenced to 33 to 55 years.

(f) THE RAISING OF THE FEDERAL QUESTIONS.

Petition for a New Trial under the Post Conviction Hearing Act, Chap. 38, Sec. 826-832, Ill. Rev. Stat. was filed January 17, 1964.

Answer of the People of the State of Illinois filed March 26, 1964.

Petition for New Trial denied September 3, 1964.

Notice of Appeal filed October 9, 1964.

Opinion of the Supreme Court of Illinois rejected petitioner's contention and affirmed the judgment of the Circuit Court of Kane County denying the Motion for a New Trial.

(g) PROCEEDINGS IN FEDERAL COURT.

(None).

(h) REASONS FOR GRANTING THE WRIT.

The decision here is in conflict with this Court's holdings in *Culombe* v. *Connecticut,* 367 U.S. 568 and *Chambers* v. *Florida,* 309 U.S. 227.

A consideration of the issue presented by the facts of this case requires a determination of the following:

(1) Was the confession of the petitioner in fact voluntary under existing constitutional standards?

(2) Did the obtaining and use of the confession render the subsequent plea of guilty involuntary?

(1) *Was the confession of the petitioner in fact voluntary under existing constitutional standards?*

The constitutional test for admission of a confession has been whether it was made freely, voluntarily and without compulsion or inducement of any sort, or whether the defendant's will was overborne at the time he confessed. "Compulsion includes torture of mind as well as of body, for the will is as much affected by fear as by force." *Watts* v. *Indiana,* 338 U.S 49.

The admitted illegal detention of the petitioner for over four days, coupled with the intermittent questioning by one or more officers without counsel or a warning of his constitutional rights are factors which the Court must consider in any determination relative to the voluntariness of a confession. Equally significant were the transfer of petitioner from one police station to another in Chicago, and finally his transportation to a distant county without any warrant or process whatsoever. Finally, the consistent refusal to comply with the statutory mandate compelling the appearance of an accused before an

examining magistrate without unnecessary delay demonstrates the total disregard for constitutional guarantees. The statutory provision of Illinois requiring the appearance before a magistrate of persons arrested without a warrant is substantially the same as that required under the Federal Rules. We are not unmindful of this Court's reluctance to apply the principle of *Mc Nabb-Mallory* to state criminal trials and the consistency with which the Court has viewed the requirement as one of procedure and not rooted in constitutional grounds. The language of this Court in *Miranda* v. *Arizona,* 384 U.S. 436 may well point the way:

> "The supervisory rules, requiring production of an arrested person before a commissioner "without unnecessary delay" and excluding evidence obtained in default of that statutory obligation, were nonetheless responsive to the same considerations of Fifth Amendment policy that unavoidably face us now as to the States."

The combination of circumstances in the instant case were so inherently coercive as to overbear the will of petitioner and are inimical to any claim of voluntariness. In *Culombe,* the accused was detained in police custody for four nights and five days on a misdemeanor charge. He was questioned intermittently by one or more officers; he had neither counsel nor warning of his constitutional rights; and he was not brought before the magistrate until after his confession of murder at midnight on the fifth day.

This Court, in concluding that the confession violated due process, stressed the duration of the detention, distinguishing it from cases where confessions were elicited after merely hours of questioning on the day of arrest.

Also emphasized was the failure to bring the accused before a magistrate or advise him of his constitutional rights, and the emotional effect of the visits of his family. The similarity of circumstances present in the instant case brings it within the holding of *Culombe* and the decision of the Supreme Court of Illinois is in conflict with that holding.

(2) *Did the obtaining and use of the confession render the subsequent plea of guilty involuntary?*

A plea of guilty which flows directly from a confession obtained in violation of constitutional rights is the fruit of the violation and is no more voluntary than the confession that gave rise to it, and the defect can only be cured when those conditions have been removed.

In *Chambers* v. *Florida*, 309 U.S. 227, this Court reversed the conviction of four defendants, three of whom had entered pleas of guilty, on the grounds that the confessions obtained were involuntary and violated due process requirements. This Court stated:

> "Since petitioners have seasonably asserted the right under the Federal Constitution to have their guilt or innocence of a capital crime determined without reliance upon confessions obtained by means proscribed by the due process clause of the Fourteenth Amendment, we must determine independently whether petitioner's confessions were so obtained, by review of the facts upon which that issue necessarily turns."

The confession of the petitioner once made was forever present, it was always in the courtroom, was read to Court as part of the proceedings which resulted in his conviction and sentence. As suggested by the Court in *U. S.* v. *Bayer*, 331 U.S. 532:

> "Of course, after an accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantage of having confessed."

The taint of illegality which attaches itself to an involuntary confession discolors the whole proceedings, and to hold that a plea of guilty based upon such a confession may stand, as though it were unrelated to it, would be tantamount to denying the relationship between cause and effect and would make a mockery of concept of due process of law.

CONCLUSION.

If this Court agrees that the instant decision is in conflict with existing authority of this Court as relates confessions in state criminal proceedings, then certiorari should be granted to resolve the conflict or correct the judgment.

Respectfully submitted,

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APPENDIX A

Docket No. 39288—Agenda 15—November, 1965.

The People of the State of Illinois, Appellee, v. Alexander Wallace, Appellant.

Mr. JUSTICE UNDERWOOD delivered the opinion of the court:

This is an appeal from the circuit court of Kane County, which denied defendant a new trial requested under the provisions of the Post-Conviction Hearing Act (Ill. Rev. Stat. 1963, chap. 38, par. 122—1 *et seq.*) by a petition filed subsequent to his conviction of murder based upon a guilty plea upon which defendant was sentenced to imprisonment in the penitentiary for a term of 33 to 55 years.

Although defendant was specifically and at length advised by the court and by his counsel as to the possible consequences of a guilty plea, he nevertheless persisted in stating that he freely and voluntarily wished to so plead. He now contends that the guilty plea was not voluntary but was the product of promises of a light sentence by the chief deputy sheriff of Kane County. It is also maintained that the guilty plea was prompted by a written confession signed by defendant, now claimed to have been obtained from him through acts of physical brutality and duress by both Chicago and Kane County authorities. Defendant argues that he was thus deprived of rights secured him by the Illinois and United States constitutions and therefore the conviction must be reversed and the cause remanded for a new trial.

On June 17, 1962, the bullet-riddled body of one Herbert Kwate was found in the country near Carpenters-

ville, Illinois. No witness to the killing were or have been forthcoming. On June 19, 1962, shortly before midnight, defendant and Gary D'Allessandro, upon receiving information that a Chicago police detective wanted to talk with them, voluntarily proceeded to a Chicago police station to see the detective.

Although no warrant was issued for his arrest, defendant was there held in custody by Chicago authorities and was intermittently interrogated by them. He was from time to time transferred to various Chicago police stations. Defendant, testifying at the post-conviction proceedings, stated that during one of these "outings", he was handcuffed and placed in a squad car and "taken for a ride", during which he was questioned about robberies and hit in the stomach at least 15 times. He was then taken back to a police station, placed in a cell with D'Allessandro for a short time and subsequently placed in a "drunk tank" in the same building. Later, defendant became nauseous and was taken in custody to a hospital where he was examined but made no complaints of mistreatment, physical or otherwise. No definitive treatment was given defendant at the hospital, and he left, in custody of the officers, immediately following his examination.

Defendant was on June 20, at about 4:00 P.M. delivered to sheriff's police from Kane County who, after brief questioning, took him to the Kane County jail at Geneva, Illinois. After intermittent interrogation, defendant on June 23, 1962, confessed to the killing of Herbert Kwate. He was indicted, the public defender appointed to represent him, and the guilty plea was entered on August 6, 1962. Conviction and sentence followed.

At the post-conviction proceedings defendant testified that during the interrogation that brought about the con-

fession, electrical wires were placed against his exposed privates several times and the confession was made only because of such brutal treatment.

Before the court sentenced defendant, a hearing in aggravation and mitigation was held during which the now allegedly coerced confession was placed before the court. During this hearing, defendant made no claims of physical mistreatment or coercion by any of the authorities involved, and, further, expressed his gratitude to the Kane County authorities for what they had done for him. At the post-conviction hearing, however, defendant completely changed his story. He told of the above related brutality by both Chicago and Kane County authorities and testified that he confessed only because of inhuman treatment visited upon him by police officers and promises that his sentence would be light should he co-operate with the Kane County authorities. It is also claimed that defendant's requests for counsel and to make phone calls were denied him during the period of his pre-arraignment detention.

Virtually all of the police officers present during the alleged acts of brutality and alleged promises of lenient treatment testified that no such maltreatment was visited upon defendant, that defendant did not request counsel or to make phone calls, and that no promises of leniency were made. No contention is made that all material witnesses were not called to testify or their absence not adequately explained. Defendant's mother testified that she heard a sheriff's deputy promise defendant leniency and a minimum sentence. The circuit court determined that no relief was available to defendant under the provision of the Post-Conviction Hearing Act.

(Opinion)

It is well settled in this State that illegal detention does not, of itself, require suppression of a confession otherwise voluntarily given but is merely a factor to be given consideration by the circuit court in determining whether the confession was in fact voluntary. (*People* v. *Novak,* 33 Ill.2d 343; *People* v. *Kees,* 32 Ill.2d 299; *People* v. *Price,* 24 Ill.2d 46.) Equally well established is the rule that the determination of the circuit court on the question of voluntariness of a confession will not be disturbed unless manifestly against the weight of the evidence (*People* v. *Hartgraves,* 31 Ill.2d 375; *People* v. *DiGerlando,* 30 Ill.2d 544.) Under the circumstances here present, we believe the circuit court's determination was not only not against the manifest weight of the evidence but was more than amply supported thereby.

We are mindful that the Supreme Court of the United States, in *Miranda* v. *Arizona,* 34 Law Week 4521, 384 U.S. 436, 16 L. Ed. 2d 694, has set forth new requirements for the admissibility of confessions, but the principles of that case are not mandatorily applicable to cases wherein, as here, trial and conviction occurred before the date of the *Miranda* decision. *Johnson* v. *New Jersey,* 34 Law Week 4592, 384 U.S. 719.

As stated earlier, defendant made no claim of police brutality at the hearing in aggravation and mitigation but changed his story only after sentence was pronounced and the post-conviction proceedings instituted. He made no claims of inhuman treatment to anyone while he was in custody or when taken to a hospital for treatment for nausea. There is no showing that any objective manifestations of brutal treatment, such as marks or bruises, appeared upon defendant's person, and all mistreatment

was denied by those alleged to have perpetrated it. Defendant's claimed promises of leniency were specifically denied by those stated to have made them and it was denied that requests for counsel were made. It was clearly within the province of the circuit court to disbelieve the substantially uncorroborated claims that defendant made at the post-conviction proceedings.

The judgment of the circuit court of Kane County must accordingly be, and is, affirmed.

Judgment affirmed.